OTHMAN BIN TAIB v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim F.J.) April 1, 1972]

[Penang — Criminal Appeal No. 20 of 1972]

Road Traffic — "Road" — Definition of — Whether road within school ground is "road" — Road Traffic Ordinance, 1958, ss. 2 & 36(1).

The appellant had been convicted on a charge of driving without due care and attention under section 36(1) of the Road Traffic Ordinance, 1958. The only question for decision was whether the road within the school grounds was a "road" within the meaning of section 2 of the Road Traffice Ordinance, 1958.

Held, dismissing the appeal: the learned magistrate was fully justified, upon the evidence before him, in concluding that the school grounds was a "road" within the meaning of section 2 of the Road Traffic Ordinance, 1958 and so properly convicted the appellant.

Cases referred to:-

(1) *Harrison* v. *Hill* (1932) S.C. (J.) 13 at p. 16, 17.
(2) *Bugge* v. *Taylor* [1941] 1 K.B. 198, 200.
(3) *Griffin* v. *Squires* [1958] 3 All E.R. 468, 470.
(4) *Chapman* v. *Parlby* (1964) 62 L.G.R. 150.
(5) *R.* v. *L. W. Burgess* [1941] M.L.J. 123.
(6) *Harrison* v. *Co-operative Insurance Co. Ltd.* (1968) 118 N.L.J. 910.

MAGISTRATE'S CRIMINAL APPEAL.

G. S. Iyer for the appellant.

Azmel bin Haji Ma'amor (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim F.J. (delivering oral judgment): The appellant had been convicted on a charge of driving without due care and attention under section 36(1) of the Road Traffic Ordinance, 1958. The only question for decision was whether the road within the school grounds is a "road" within the meaning of section 2 of the Ordinance.

In *Harrison* v. *Hill*(1) at page 16 Lord Justice General (Lord Clyde) said:

"It is plain from the terms of the definition that the class of road intended is wider than the class of public roads to which the public has access in virtue of a positive right belonging to the public, and flowing either from statute or from prescriptive user."

Lord Caldecote C.J. in *Bugge* v. *Taylor*(2) at page 200 said:

"In my view, that passage from Lord Clyde's judgment is applicable here because by virtue of section 15 of the Act of 1927 'the expression 'road' means any public highway and any other road to which the public has access.' *(See definition of 'road' in section 2 of the Road Traffic Ordinance, 1958).* A road which is not a public highway may, therefore, be a 'road' within section 1, sub-section 1."

Whether it is such a road is a question of fact. As is said by Lord Parker C.J. in *Griffin* v. *Squires*(3) at page 470 —

"It is eminently a question of fact for the justices to say whether a certain space is a road. Having decided that the general public have access to it, they must then go further and ask: Is this place to which the public have access a road?"

It has been held therefore that a road leading from a public highway to a farm house is a "road" if the public have access thereto. As Lord Sands said in *Harrison* v. *Hill, supra,* at page 17:

"Any road may be regarded as a road to which the public have access if it is a road upon which members of the public are to be found who have not obtained access either by overcoming a physical obstruction or in defiance of a prohibition express or implied."

(See also *Chapman* v. *Parlby*(4)).

A Singapore case decided on appeal in 1941 (*Rex* v. *L. W. Burgess*(5)) ruled that a road, the property of the Air Ministry, along which were native shops open to the public except for one day in the year for preserving its private nature was a public thoroughfare. As McElwaine C.J. said:

"the agreed facts strongly suggest that on all except one day in the year it is indicated to the public that they may use the road and that on those 364 days the public is granted access to the road and it is on those days a public thoroughfare."

So was it decided in *Harrison* v. *Co-operative Insurance Co. Ltd.*(6) that a factory road will be such a road if the "Private Road" sign has been removed and not replaced and there is no other indication that access by the public is restricted.

In the instant case, a driver of a private car Mr. Lee Hoay Eam (PW3) testified as follows:

"On 23.2.71 at about 12.30 p.m. I went to the Penang Chinese Girls High School. I went in my car PH. 3955. I parked car in the primary school and walked over to the High School. I waited at the playing field, about 80' — 90' from exit gate of High School. I waited for school children — my employer's children.

At about 1.40 p.m. the High School had not finished and there was no traffic on the exit road — except for a bus. The bus had entered the school and was travelling along school to a certain spot. It stopped on the exit road and started reversing.

I saw two small girls at place where bus was reversing. The two girls were seated on the road kerb at the edge of the field. No one got down where bus stopped. The bus reversed towards its off-side. The front of bus moved to the left of road and went onto the field. The front nearside wheel came into contact with one of the two girls."

He said further that lots of cars, pedestrians, cyclists and buses were allowed freely to enter the school. He himself was not stopped. The defence called the business manager of the school who said the road in question was a private road but school children, staff and any other person having business with the school have implied permission to enter. Trespassers and people acting suspiciously would be told to leave. In my view, upon the evidence before him the learned magistrate was fully justified in concluding that it was a road as defined.

I can find no mitigating or other extenuating circumstances with regard to the accident resulting in injury to the little girl. The appeal is dismissed and the fine and the order of the learned magistrate confirmed.

Appeal dismissed.

Solicitors: *Lim Kean Siew & Co.*